IN THE HIGH COURT OF BOMBAY AT GOA

Civil Revision Application NO.218 of 2001
&
Civil Revision Application No.219 of 2001.

DELCON ENGINEERING,
Civil Contractors,
Mulla Mansion,
Ponda, Goa ...Petitioners

Versus

STATE OF GOA,
represented by Executive
Engineer, Works Division XII,
Irrigation Department,
Fatorda, Margao,Goa ...Respondent.

Shri C. Mascarenhas, Advocate for the Petitioners.

Shri V.P. Thali, Addl. Advocate General, with Shri M.J. Rane, Addl. Government Advocate, for the Respondent.

CORAM : F.I. REBELLO,J.

DATED : JANUARY 11, 2002.

ORAL JUDGMENT

Heard forthwith.

Civil Revision Application No.219 of 2001 is against the Order dated 30th January, 2001 by which according to the Petitioner, his objection for modification of the Award to the extent that pendente lite interest was not awarded, has been rejected. Insofar as that Application is concerned, the Application was

made much beyond the period after the notice was issued of filing of the Award. In the said Application, the Petitioner herein prayed for condonation of delay. The ground given was that the Petitioner learnt of the decision of the Apex Court in the case of **Secretary, Irrigation Department v. G.C. Roy,** which is reported now in AIR 1990 SC 3732, only on 31-7-1992, i.e. on the same day when the objections were filed. It is further contended that the Application by the Petitioner was under Section 15 and not under Section 30 and, therefore, the period of one month for filing objections will not arise in the matter and limitation therefore will not apply.

Dealing with the second contention, first it is clear according to the Petitioner, that he had applied for pendente lite interest. The Arbitrator did not grant pendente lite interest. In other words, it was rejected. If it was rejected, the consequences are that it could only be set aside under Section 30. Therefore, the contention that the Application was filed under Section 15, to my mind, cannot be considered.

We then come to the second part of the

objections, namely, that the Petitioner came to know about the change in law only on 31st July, 1992. It is true that earlier the law, as it stood, was that the Arbitrator had no power to grant pendente lite interest until the judgment in **Secretary, Irrigation Department** (supra). It is further true that that judgment has been made applicable to pending proceedings. The Petitioner was fully aware that his objection has been rejected. Yet he chose not to challenge that part of the Award. Merely, therefore, because the Apex Court has declared the law thereafter, to my mind, that itself cannot be a ground for condoning the delay. Once an objection was raised, the fact that it was not challenged, is an acceptance by the Petitioner of the finality of the Award on that ground. Ultimately, these are matters of public revenue. The learned Arbitrator chose not to award pendente lite interest though applied for and the same was not rejected merely on the ground that the Arbitrator had no jurisdiction to award pendente lite interest. Apart from that, the Order of the learned Judge discloses that the point was not raised. It is now sought to be contended before this Court that the point was, in fact, raised. Obviously, it was open to the

Petitioner herein to move the Court below to point out the error and to get it corrected. That has not been done. In these circumstances, to my mind, it would not be appropriate to interfere with the Order of the trial Court dated 30th January, 2001 insofar as pendente lite interest is concerned.

Hence rejected. NO order as to costs.

In Civil Revision Application No.218 of 2001, the grievance of the Petitioner is that future interest has not been awarded by the Order of the Court dated 30th January, 2001. Obviously, there is an error in failure of exercise of jurisdiction by the trial Court concerning the judgment of the Apex Court in **State of Jammu & Kashmir v. Dev Dutt Pandit** (AIR 1999 SC 3196). It is further clear that considering the provisions in the Interest Act, 1978, the Petitioner will be entitled to simple interest at the current rate of interest. Our Court has recognized that during the period the current rate of interest is 10% p.a. In the light of that, from the date of decree the amount will carry simple interest at the rate of 10% till payment.

Considering that the interest is not arising out of commercial transaction but on the ground of damages, interest would be simple interest in terms of the Interest Act, 1978.

It was sought to be contended on behalf of the Respondent that in view of the Order of this Court, they are entitled for receiving monies from the Petitioner. That matter can be considered if the Petitioner herein applies for execution or in the event there is no money due therein the Respondent State would be entitled in the ordinary course to receive back all the amount due and payable.

(F.I. REBELLO)
JUDGE.

ac.